

§ 14.806

38 CFR Ch. I (7–1–14 Edition)

summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in §14.807, the responsible VA official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.806 Scope of testimony or production.

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in §14.807(b). VA personnel may only testify concerning or comment upon official VA information, subjects or activities, or produce records, that were specified in writing, submitted to and properly approved by the responsible VA official.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.807 Procedure when demand or request is made.

(a) VA personnel upon whom a demand or request for testimony or the production of records in connection with legal proceedings as defined in §14.802(d) is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. The field station or Central Office component shall notify the responsible VA official designated in §14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the Regional Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the Regional Counsel office designated by the Regional Counsel is the responsible VA official authorized to deter-

mine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in §14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the VA official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The responsible VA official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in §14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the responsible VA official in accordance with this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (b) of this section shall furnish the requester or the court or other authority with a copy of §§14.800 through 14.810 and any other relevant documentation, inform the requester or the court or other authority